

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

**Jul 19, 2021**

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

JENNIFER P.,<sup>1</sup>

Plaintiff,

v.

COMMISSIONER OF SOCIAL  
SECURITY,<sup>2</sup>

Defendant.

No. 1:20-CV-03099-SAB

**ORDER GRANTING  
DEFENDANT'S MOTION FOR  
SUMMARY JUDGMENT AND  
DENYING PLAINTIFF'S  
MOTION FOR SUMMARY  
JUDGMENT**

Before the Court are cross-motions for summary judgment. ECF Nos. 14, 15.  
The motions were heard without oral argument. Plaintiff is represented by Timothy

<sup>1</sup> Pursuant to the recommendation of the Committee on Court Administration and  
Case Management of the Judicial Conference of the United States, Plaintiff's name  
is partially redacted.

<sup>2</sup> Kilolo Kijakazi became the Acting Commissioner of Social Security on July 9,  
2021. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Kilolo  
Kijakazi is substituted for Andrew M. Saul as the defendant in this suit. *See*  
U.S.C. § 405(g).

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1 W. Anderson and Victoria B. Chhagan; Defendant is represented by Erin F.  
2 Highland and Timothy M. Durkin.

3 Plaintiff brings this action seeking judicial review of the Commissioner of  
4 Social Security's final decision denying her application for Social Security  
5 Disability Insurance under Title II of the Social Security Act, 42 U.S.C. §§ 401–434.  
6 After reviewing the administrative record and briefs filed by the parties, the Court is  
7 now fully informed. For the reasons set forth below, the Court denies Plaintiff's  
8 Motion for Summary Judgment and grants Defendant's Motion for Summary  
9 Judgment.

### 10 I. Jurisdiction

11 On October 11, 2018, Plaintiff filed an application for social security  
12 disability insurance benefits. Plaintiff alleged an onset date of September 1, 2017.  
13 Administrative Record ("AR") at 18.

14 Plaintiff's application was denied initially and on reconsideration. *Id.* at 88,  
15 96. On July 3, 2019, Plaintiff requested a hearing before an Administrative Law  
16 Judge ("ALJ"). *Id.* at 103. On March 3, 2020, Plaintiff appeared and testified at a  
17 video hearing held before ALJ M. J. Adams, as did Vocational Expert Kimberly  
18 Mullinax. *Id.* at 15. During the hearing, Plaintiff amended her alleged onset date to  
19 January 17, 2018. *Id.* The ALJ issued a decision on March 31, 2020, finding that  
20 Plaintiff was not disabled. *Id.* at 19.

21 Plaintiff requested review by the Appeals Council; the Appeals Council  
22 denied the request on May 14, 2020. *Id.* at 1, 151. The Appeals Council's denial of  
23 review makes the ALJ's decision the "final decision" of the Commissioner of Social  
24 Security. 42 U.S.C. §§ 405(g), 1383(c)(1)(3).

25 Plaintiff filed a timely appeal with the United States District Court for the  
26 Eastern District of Washington on July 9, 2020. ECF No. 1. The matter is before this  
27 Court pursuant to 42 U.S.C. § 405(g).

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## II. Five-Step Sequential Evaluation Process

The Social Security Act defines disability as the “inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months.” 42 U.S.C. § 1382c(a)(3)(A). A claimant shall be determined to be under a disability only if her impairments are of such severity that the claimant is not only unable to do her previous work, but cannot, considering claimant’s age, education, and work experiences, engage in any other substantial gainful work that exists in the national economy. *Id.* § 1382c(a)(3)(B). The Commissioner has established a five-step sequential evaluation process to determine whether a person is disabled in the statute. 20 C.F.R. § 416.920(a)(4); *Bowen v. Yuckert*, 482 U.S. 137, 140–42 (1987).

**Step One:** Is the claimant engaged in substantial gainful activities? 20 C.F.R. § 404.1520(b). Substantial gainful activity is work done for pay and requires compensation above the statutory minimum. *Keyes v. Sullivan*, 894 F.2d 1053, 1057 (9th Cir. 1990). If the claimant is engaged in substantial activity, benefits are denied. 20 C.F.R. § 404.1520(b). If the claimant is not, the ALJ proceeds to step two.

**Step Two:** Does the claimant have a medically-severe impairment or combination of impairments? 20 C.F.R. § 404.1520(c). A severe impairment is one that lasted or must be expected to last for at least 12 months and must be proven through objective medical evidence. *Id.* § 404.1509. If the claimant does not have a severe impairment or combination of impairments, the disability claim is denied. *Id.* § 404.1520(a)(4)(ii). If the impairment is severe, the evaluation proceeds to the third step.

**Step Three:** Does the claimant’s impairment meet or equal one of the listed impairments acknowledged by the Commissioner to be so severe as to preclude substantial gainful activity? 20 C.F.R. § 416.920(d), § 404 Subpt. P. App. 1. If the impairment meets or equals one of the listed impairments, the claimant is

1 conclusively presumed to be disabled. *Id.* § 416.920(d). If the impairment is not one  
2 conclusively presumed to be disabling, the evaluation proceeds to the fourth step.

3 Before considering the fourth step, the ALJ must first determine the  
4 claimant's residual functional capacity. 20 C.F.R. § 404.1520(e). An individual's  
5 residual functional capacity is her ability to do physical and mental work activities  
6 on a sustained basis despite limitations from her impairments.

7 **Step Four:** Does the impairment prevent the claimant from performing work  
8 she has performed in the past? 20 C.F.R. § 404.1520(f). If the claimant is able to  
9 perform her previous work, she is not disabled. *Id.* If the claimant cannot perform  
10 this work, the evaluation proceeds to the fifth and final step.

11 **Step Five:** Is the claimant able to perform other work in the national economy  
12 in view of her age, education, and work experience? 20 C.F.R. § 404.1520(g).

13 The initial burden of proof rests upon the claimant to establish a prima facie  
14 case of entitlement to disability benefits. *Tackett v. Apfel*, 108 F.3d 1094, 1098 (9th  
15 Cir. 1999). This burden is met once a claimant establishes that a physical or mental  
16 impairment prevents him from engaging in his previous occupation. *Id.* At step five,  
17 the burden shifts to the Commissioner to show that the claimant can perform other  
18 substantial gainful activity. *Id.*

### 19 **III. Standard of Review**

20 The Commissioner's determination will be set aside only when the ALJ's  
21 findings are based on legal error or are not supported by substantial evidence in the  
22 record as a whole. *Matney v. Sullivan*, 981 F.2d 1016, 1018 (9th Cir. 1992) (citing  
23 42 U.S.C. § 405(g)). Substantial evidence is "more than a mere scintilla,"  
24 *Richardson v. Perales*, 402 U.S. 389, 401 (1971), but "less than a preponderance,"  
25 *Sorenson v. Weinberger*, 514 F.2d 1112, 1119 n.10 (9th Cir. 1975). Substantial  
26 evidence is "such relevant evidence as a reasonable mind might accept as adequate  
27 to support a conclusion." *Richardson*, 402 U.S. at 401.

1 A decision supported by substantial evidence will be set aside if the proper  
 2 legal standards were not applied in weighing the evidence and making the decision.  
 3 *Browner v. Sec'y of Health & Human Servs.*, 839 F.2d 432, 433 (9th Cir. 1988). An  
 4 ALJ is allowed “inconsequential” errors as long as they are immaterial to the  
 5 ultimate nondisability determination. *Stout v. Comm’r, Soc. Sec. Admin.*, 454 F.3d  
 6 1050, 1055 (9th Cir. 2006). The Court must uphold the ALJ’s denial of benefits if  
 7 the evidence is susceptible to more than one rational interpretation, one of which  
 8 supports the decision of the ALJ. *Batson v. Barnhart*, 359 F.3d 1190, 1193 (9th Cir.  
 9 2004). The Court reviews the entire record. *Jones v. Heckler*, 760 F.2d 993, 995 (9th  
 10 Cir. 1985). “If the evidence can support either outcome, the court may not substitute  
 11 its judgment for that of the ALJ.” *Matney*, 981 F.2d at 1019.

12 For claims filed on or after March 27, 2018,<sup>3</sup> like the present claim, new  
 13 regulations apply regarding the evaluation of medical evidence. Revisions to Rules  
 14 Regarding the Evaluation of Medical Evidence, 82 Fed. Reg. 5844 (Jan. 18, 2017).  
 15 The new regulations eliminate any semblance of a hierarchy of medical opinions and  
 16 state that the agency does not defer to any medical opinions. 20 C.F.R.  
 17 § 404.1520c(a). Specifically, the rules eliminate the agency’s “treating source rule,”  
 18 which gave special deference to certain opinions from treating sources. 82 Fed. Reg.  
 19 at 5853. The new regulations require an ALJ to explain how he or she considered  
 20 the factors of (1) supportability; and (2) consistency, which are the two most  
 21 important factors in determining the persuasiveness of a medical opinion. 20 C.F.R.  
 22 § 404.1520c(b)(2). The ALJ is not required to explain how he or she considered  
 23 factors other than “supportability” and “consistency,” unless the ALJ finds that two  
 24 or more medical opinions about the same issue are equally well-supported and

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25  
 26 <sup>3</sup> For claims filed prior to March 27, 2017, an ALJ was to give more weight to “those  
 27 physicians with the most significant clinical relationship with the plaintiff.”  
 28 *Carmickle v. Comm’r*, 533 F.3d 1155, 1164 (9th Cir. 2008).

1 consistent with the record, but not identical. 20 C.F.R. § 404.1520c(b)(3). “The more  
2 relevant the objective medical evidence and supporting explanations presented by a  
3 medical source are to support his or her medical opinion(s), . . . the more persuasive  
4 the medical opinions . . . will be.” *Id.* § 404.1520c(c)(1). Furthermore, an opinion is  
5 unpersuasive when it is inconsistent “with the evidence from other medical sources  
6 and nonmedical sources.” *Id.* § 404.1520c(c)(2).

7       The Ninth Circuit has not yet had the opportunity to address the impact of the  
8 new regulations on the requirement that an ALJ provide “clear and convincing”  
9 reasons for rejecting an uncontradicted physician’s opinion or “specific and  
10 legitimate reasons” for rejecting a contradicted physician’s opinion. *Lester v.*  
11 *Chater*, 81 F.3d 821, 830–31 (9th Cir. 1995). At least one district court has found  
12 that the new regulations do not alter the standards because they are “based on  
13 evidentiary principles in administrative law, and not on a hierarchy of opinions.”  
14 *Patricia Jo I. v. Comm’r of Soc. Sec.*, No. 3:20-CV-5832-DWC, 2021 WL 1589522,  
15 at \*3 (W.D. Wash. Apr. 23, 2021) (citing *Kathleen G. v. Comm. Soc. Sec.*, No. 2:20-  
16 cv-461-RSM (W.D. Wash. Nov. 10, 2020)). However, the same district court  
17 correctly noted that relevant Ninth Circuit precedent necessarily “linked the need for  
18 such reasons to the rationale underlying the hierarchy.” *Patricia F. v. Saul*, No. C19-  
19 5590-MAT, 2020 WL 1812233, at \*4 (W.D. Wash. Apr. 9, 2020).

20       For sake of consistency in this District, the Court adopts the rationale and  
21 holding articulated by Judge Mendoza on the issue in *Emilie K. v. Saul*, No. 2:20-  
22 cv-00079-SMJ, 2021 WL 864869, \*3–4 (E.D. Wash. Mar. 8, 2021), *appeal*  
23 *docketed*, No. 21-35360 (9th Cir. May 10, 2021). In that case, the Court held that the  
24 ALJ did not err in applying the new regulations over Ninth Circuit precedent,  
25 because the result did not contravene the Administrative Procedure Act’s  
26 requirement that decisions include a statement of “findings and conclusions, and the  
27 reasons or basis therefor, on all the material issues of fact, law, or discretion  
28 presented on the record.” *Id.* at \*4 (citing 5 U.S.C. § 557(c)(A)). Nevertheless, it is

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1 not clear that the Court’s analysis in this matter would differ in any significant  
2 respect under the “clear and convincing” standard of *Lester v. Chater*, 81 F.3d 821  
3 (9th Cir. 1995).

#### 4 IV. Statement of Facts

5 The facts have been presented in the administrative record, the ALJ’s  
6 decision, and the briefs to this Court. Only the most relevant facts are summarized  
7 herein.

8 At the time of the hearing, Plaintiff was 34 years old. AR at 23. Plaintiff has  
9 a high school education and has worked as a cashier, restaurant manager, assistant  
10 supermarket manager, and supervisor at a hardware store. ECF No. 14 at 3. In  
11 December 2017, Plaintiff left her work as a supervisor at a hardware store for  
12 maternity leave. AR at 17. Plaintiff was terminated from work in March 2018. *Id.*

13 The ALJ considered several ailments of Plaintiff’s, but only her spinal  
14 impairment and back pain are the subject of this appeal. Plaintiff had a previous  
15 spinal impairment, and a surgeon performed a lumbar laminectomy and discectomy  
16 on her in June 2016. *Id.* at 43–44. She returned to work after these procedures.  
17 Plaintiff asserts that her back pain reignited after giving birth to her child on January  
18 16, 2018—her amended alleged onset date—and increased subsequently in May  
19 2018, when she was putting her child in a car and felt a “pop” in her back. *Id.* at 296,  
20 328. An MRI from May 2018 revealed that her disc was herniated. *Id.* at 22.

21 Plaintiff is currently providing childcare and working as a bookkeeper for her  
22 father’s business approximately ten hours a week. *Id.* at 36, 43. With her present  
23 work, Plaintiff can choose when to work approximately two hours during the day.  
24 *Id.* at 50. Plaintiff testified at the ALJ hearing that she did not think she could  
25 perform the same type of work on a full-time or 30-hour a week basis, because she  
26 requires breaks and the ability to lie down and work at her own pace. *Id.* at 43–44.  
27 Her typical day including cooking and cleaning laundry and dishes; however, she  
28 states that she has to take several breaks due to back pain. *Id.* at 231. She estimates



1 that she cannot walk more than 1/4 mile without taking a break, and that she cannot  
2 stand or sit for longer than 30–60 minutes without pain. *Id.* at 259.

### 3 **V. The ALJ’s Findings**

4 On March 31, 2020, the ALJ issued an opinion affirming denial of benefits.  
5 The ALJ concluded that Plaintiff’s allegations were not consistent with the record  
6 and held that Plaintiff was not disabled and could perform work that exists in  
7 significant numbers in the national economy. *Id.* at 27.

8 At step one, the ALJ found that Plaintiff has not engaged in substantial gainful  
9 activity since January 17, 2018, the amended alleged disability onset date. *Id.* at 20.

10 At step two, the ALJ found that Plaintiff had the following severe  
11 impairments: spinal impairment(s), hiatal hernia, and gastritis. *Id.* at 21.

12 At step three, the ALJ found that Plaintiff did not have an impairment or  
13 combination of impairments that meets or medically equals the severity of one of  
14 the listed impairments. *Id.* at 22. Instead, the ALJ concluded that Plaintiff has a  
15 residual function capacity (“RFC”) to perform:

16 light work as defined in 20 CFR 404.1567(b) except she can occasionally  
17 climb ladders, rope, and scaffolding. She can frequently stoop, kneel, crouch,  
18 crawl, and climb ramps and stairs. She should avoid concentrated exposure to  
19 vibration and hazards.

20 *Id.*

21 At step four, the ALJ found that Plaintiff was capable of performing past  
22 relevant work as a shipping checker and a shipping/receiving supervisor, which did  
23 not require the performance of work-related activities precluded by the Plaintiff’s  
24 residual functional capacity. *Id.* at 26.

25 At step five, the ALJ found that, even if Plaintiff could not perform past  
26 relevant work, Plaintiff was not disabled and capable of making a successful  
27 adjustment to other work that exists in significant numbers in the national economy,  
28 including fast food worker, cashier II, and housekeeping cleaner. *Id.* at 26–27.



## VI. Issues for Review

The question presented is whether substantial evidence supports the ALJ's decision denying benefits, and, if so, whether that decision is based on proper legal standards. Plaintiff contends the ALJ erred by (1) rejecting her testimony regarding pain symptoms; (2) rejecting the medical opinion of her treating physician, Dr. Steven Foster; and (3) rejecting the lay witness testimony of her mother, Mrs. Pamela Betts.

## VII. Discussion

### 1. The ALJ Did Not Err in Rejecting Plaintiff's Testimony Regarding Pain Symptoms.

Plaintiff contends that the ALJ erred in rejecting her testimony regarding her symptoms and functional limitations. ECF No. 14 at 4. In response, Defendant argues that the ALJ reasonably evaluated Plaintiff's subjective complaints and dismissed them because her treatment records and examination findings were inconsistent with her alleged symptoms. ECF No. 15 at 4.

The ALJ compares a claimant's allegations to the rest of the evidence to determine whether the claimant's statements are consistent. 20 C.F.R. § 404.1529(c). With respect to symptom testimony, an ALJ's findings must be "properly supported by the record and sufficiently specific to allow a reviewing court to conclude the adjudicator rejected the claimant's testimony on permissible grounds and did not arbitrarily discredit a claimant's testimony regarding [symptoms]." *Bunnell v. Sullivan*, 947 F.2d 341, 345–46 (9th Cir. 1991) (en banc).

The ALJ is responsible for making credibility determinations. *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035–36 (9th Cir. 2007). An ALJ engages in a two-step analysis to determine whether a claimant's testimony regarding subjective pain or symptoms is credible. *Garrison v. Colvin*, 759 F.3d 995, 1014 (9th Cir. 2014). "First, the ALJ must determine whether the claimant has presented objective medical evidence of an underlying impairment 'which could reasonably be expected to

1 produce the pain or other symptoms alleged.” *Id.* (quoting *Lingenfelter*, 504 F.3d at  
2 1036). In this analysis, the claimant is not required to show “that [her] impairment  
3 could reasonably be expected to cause the severity of the symptom [she] has alleged;  
4 [she] need only show that it could reasonably have caused some degree of that  
5 symptom.” *Smolen v. Chater*, 80 F.3d 1273, 1282 (9th Cir. 1996). In addition, she  
6 need not produce “objective medical evidence of the pain or fatigue itself, or the  
7 severity thereof.” *Id.*

8 Second, once a claimant has produced evidence of an impairment, the ALJ  
9 may not discredit testimony by asserting solely that symptoms are not affirmatively  
10 supported by objective medical evidence. *Robbins v. Soc. Sec. Admin.*, 466 F.3d 880,  
11 883 (9th Cir. 2006). The ALJ must provide specific, cogent reasons to find that the  
12 claimant is not credible. *Greger v. Barnhart*, 464 F.3d 968, 972 (9th Cir. 2006)  
13 (citing *Rashad v. Sullivan*, 903 F.2d 1229, 1231 (9th Cir. 1990)). Factors the ALJ  
14 may consider when making such credibility determinations include the objective  
15 medical evidence, the claimant’s treatment history, the claimant’s daily activities,  
16 and inconsistencies in testimony. *See Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th  
17 Cir. 2013); *Tommasetti v. Astrue*, 533 F.3d 1035, 1039 (9th Cir. 2008). If the ALJ’s  
18 credibility finding is supported by substantial evidence in the record, the Court may  
19 not engage in second-guessing. *Thomas v. Barnhart*, 278 F.3d 947, 959 (9th Cir.  
20 2002). The Court will affirm the ALJ’s reasoning so long as it is clear and  
21 convincing. *Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001).

22 In this case, the ALJ did not err in finding Plaintiff’s testimony unpersuasive.  
23 The ALJ provided clear, cogent, and convincing reasons for rejecting Plaintiff’s  
24 testimony regarding pain symptoms. First, the ALJ found that Plaintiff’s treatment  
25 records and examination findings were inconsistent with her alleged symptoms. AR  
26 at 20–21. Inconsistencies between a claimant’s allegations and the relevant medical  
27 evidence is a sufficient reason to reject a claimant’s testimony. *Tonapetyan v. Halter*,  
28 242 F.3d 1144, 1148 (9th Cir. 2001). The ALJ noted that Plaintiff’s treatment

1 records indicated generally normal functioning. For example, when Plaintiff  
2 complained of lumbar pain in May 2018, her physical exam indicated normal  
3 bilateral leg strength and intact heel and toe walk. AR at 20–21 (citing AR 294).  
4 After one injection to her lumbar spine and completion of one round of physical  
5 therapy, Plaintiff had mild pain and back spasms upon examination, but no pain on  
6 palpation, normal gait, and unrestricted extremity movement. *Id.* at 21 (citing *id.* at  
7 365, 604). After another round of physical therapy, medical records from June,  
8 September, and December 2019 indicate that Plaintiff continued to present with  
9 normal gait and unrestricted extremity of movement. *Id.* (citing *id.* at 577, 585, 589).  
10 With each physical therapy visit, she reported overall improvement in her back pain,  
11 *id.* (citing *id.* at 498, 500, 507, 509, 511, 517), including greater ease of movement  
12 in the lumbar spine with less restrictions, *id.* at 507. These findings were sufficient  
13 to reject Plaintiff’s subjective testimony regarding symptoms.

14 Another reason the ALJ discounted Plaintiff’s subjective complaints was  
15 because Plaintiff’s symptoms were generally resolved and/or well controlled with  
16 conservative treatment, such as physical therapy, medication, and one epidural  
17 injection. *Id.* at 20–21. An ALJ may discount a claimant’s testimony based on  
18 evidence of conservative treatment. *See Parra v. Astrue*, 481 F.3d 742, 750–51 (9th  
19 Cir. 2007); *see also Tommasetti*, 533 F.3d at 1039–40 (finding that where claimant  
20 “responded favorably to conservative treatment,” the ALJ properly discounted  
21 subjective reports of disabling pain); *Wellington v. Berryhill*, 878 F.3d 867, 876 (9th  
22 Cir. 2017) (“[E]vidence of medical treatment successfully relieving symptoms can  
23 undermine a claim of disability.”).

24 Here, after Plaintiff received one epidural injection to her lumbar spine in June  
25 2018, she reported having “100% relief of her leg pains,” AR at 21 (citing *id.* at 299),  
26 and in July 2018, made “good gains with physical therapy” with respect to pain  
27 reduction and improving her range of motion, *id.* at 325. In August 2018, Plaintiff  
28 reported that her back pain was “manageable” after completion of physical therapy

1 and that she was using pain medication as needed. *Id.* at 21 (citing *id.* at 302–04).  
2 She denied having weakness. *Id.* at 21 (citing *id.* at 364, 603). Rather, Plaintiff’s  
3 “main concern” at these visits was not back pain, but worsening anxiety and urinary  
4 frequency. *Id.* at 364, 603. Later records also demonstrate that Plaintiff did not  
5 request or receive any additional treatment for her back, but instead continued on the  
6 same medications as previously proscribed. *Id.* at 21 (citing *id.* at 574). The ALJ’s  
7 reasons were sufficiently specific and convincing to allow this Court to conclude  
8 that the ALJ did not reject Plaintiff’s testimony on impermissible grounds.

9       The ALJ also noted that Plaintiff stated at the hearing that she was not taking  
10 any medication for her disabling pain symptoms, despite performing ongoing  
11 childcare and part-time work, because she did not like to take it. *Id.* at 21. The ALJ  
12 noted that this contradicted Plaintiff’s treatment records and previous statements,  
13 which indicated that her back pain was stable when taking medication and that she  
14 was taking medication as needed for pain. *Id.* Inconsistent statements regarding  
15 symptoms are a valid reason to discount a claimant’s testimony. *See Tommasetti*,  
16 553 F.3d at 1039. As a result, the ALJ provided clear and convincing reasons for  
17 finding Plaintiff’s testimony not credible.

18       2. The ALJ Did Not Err in Rejecting the Medical Opinion of Plaintiff’s  
19 Treating Physician, Dr. Foster.

20       Plaintiff also contends that the ALJ erred in rejecting the opinion of her  
21 treating physician, Dr. Foster, and that Ninth Circuit precedent pertaining to the  
22 hierarchical evaluation of medical sources still applies. ECF No. 14 at 11–16.  
23 Defendant argues that the ALJ reasonably evaluated the persuasiveness of Dr.  
24 Foster’s medical opinion and the ALJ’s decision was properly supported by the  
25 “supportability” and “consistency” factors under 20 C.F.R. § 404.1520c(b)(2). *See*  
26 ECF No. 15 at 12, 13–15.

27       Dr. Foster completed an assessment form listing Plaintiff’s diagnosis as  
28 lumbar disc herniation, with the following symptoms: decreased forward bending,

1 lumbar muscle spasm/tension, and symptoms of low back pain and leg weakness.  
2 AR at 403. He opined that Plaintiff working regularly and continuously would cause  
3 her condition to deteriorate; that she would have to lie down thirty to sixty minutes  
4 for every hour Plaintiff was on her feet; and that she would miss four or more days  
5 of work per month due to flares of muscle spam, if she attempted to work a 40-hour  
6 work week. *Id.* at 403–04.

7 The Court holds that the ALJ applied the correct standards for evaluation of  
8 medical testimony. The Court also finds that the ALJ provided legitimate reasons to  
9 discount Dr. Foster’s medical opinion regarding Plaintiff’s limitations. First, the ALJ  
10 found Dr. Foster’s opinion unpersuasive because his extreme limitations were not  
11 supported by his treatment records. *Valentine v. Comm’r*, 574 F.3d 685, 692–93 (9th  
12 Cir. 2009) (finding that a contradiction between an opinion and treatment notes  
13 constitutes a “specific and legitimate” reason for rejecting a physician’s opinion).  
14 To illustrate, in medical records, Dr. Foster repeatedly noted that claimant’s back  
15 pain was well controlled and stable. AR at 364, 584, 588, 603. In December 2019,  
16 the same month Dr. Foster provided his opinion as to Plaintiff’s limitations, Dr.  
17 Foster’s physical exam noted only mild pain and muscle spasm, with normal  
18 movement and gait. *Id.* at 577. Indeed, Plaintiff’s main concern at this visit was  
19 “worsening dysuria,” not back pain. *Id.* at 574. The ALJ also considered the fact that  
20 Dr. Foster’s limitations appeared to adopt, identically, Plaintiff’s subjective reports  
21 of pain. *Id.* at 25.

22 Second, the ALJ noted that other medical evidence on record indicated that  
23 Plaintiff’s symptoms were well-controlled with conservative treatment. *Id.* at 299,  
24 302–04, 325, 333, 494, 498, 507, 509, 511, 517. “The more relevant the objective  
25 medical evidence and supporting explanations presented by a medical source are to  
26 support his or her medical opinion(s), . . . the more persuasive the medical  
27 opinions . . . will be.” *Id.* § 404.1520c(c)(1). Dr. Foster’s medical records, which  
28 indicated well-controlled symptoms, undermined his opinion regarding Plaintiff’s

1 limitations. The ALJ reasonably found that Dr. Foster's treatment records  
2 contradicted his ultimate opinion as to Plaintiff's limitations.

3 Third, the ALJ found the medical opinions of Drs. Staley and Virji to be more  
4 consistent with the Plaintiff's treatment records, examination findings, and  
5 activities. AR at 22. An opinion is unpersuasive when it is inconsistent "with the  
6 evidence from other medical sources and nonmedical sources." 20 C.F.R. §  
7 404.1520c(c)(2). Both state agency medical consultants opined that Plaintiff could  
8 perform light work, except she could occasionally climb ladders and could  
9 frequently stoop, kneel, crouch, crawl, and climb ramps and stairs. AR at 23. Both  
10 doctors opined that Plaintiff should avoid concentrated exposure to vibration and  
11 hazards. *Id.* Their opinion testimony was inconsistent with Dr. Foster's extreme  
12 limitations yet supported by the medical record as a whole. As a result, the ALJ  
13 properly found the opinions of Drs. Staley and Virji more persuasive, and overall  
14 provided legally sufficient reasons to discount Dr. Foster's opinion.

15 3. The ALJ Did Not Err in Rejecting the Lay Witness Testimony of Plaintiff's  
16 Mother, Mrs. Betts.

17 Last, Plaintiff contends that the ALJ erred in rejecting lay witness testimony  
18 from her mother, Mrs. Pamela Betts, and that the ALJ did not provide "specific,  
19 germane reasons" for rejection of her testimony. *Id.* at 16. Plaintiff notes that  
20 relatives are in a good position to observe a claimant's symptoms and daily activities  
21 and can provide competent evidence to substantiate medical opinions of record or to  
22 show directly how an impairment affect the claimant's ability to work. *Sprague v.*  
23 *Bowen*, 812 F.2d 1226, 1232 (9th Cir. 1987). Defendant argues that the ALJ  
24 reasonably found Mrs. Betts' testimony unpersuasive because it was inconsistent  
25 with the objective medical record.

26 The Court finds that the ALJ did not err in rejecting lay witness testimony  
27 from Mrs. Betts. An ALJ must provide germane reasons to discount the testimony  
28 of a lay witness. *Dodrill v. Shalala*, 12. F.3d 915, 919 (9th Cir. 1993). One reason



1 for which an ALJ may discount lay testimony is that it conflicts with medical  
2 evidence. *Lewis v. Apfel*, 236 F.3d 503, 511 (9th Cir. 2001). The ALJ found that  
3 Mrs. Betts testimony was not reliable because her testimony was inconsistent with  
4 the medical record, which indicated “well-controlled back pain admist generally  
5 normal signs of physical functioning.” AR at 25 (citing *id.* at 299, 303, 364–66, 555,  
6 559, 562, 584–85, 588–89, 594–95, 603–04). The ALJ considered the medical  
7 opinions of two non-treating physicians, Drs. Staley and Virji, each who found that  
8 Plaintiff could perform light work. *Id.* at 65 (Exhibit 2A), 78 (Exhibit 4A). He  
9 determined that these professional opinions were “more persuasive, better  
10 supported, and more consistent with the record as a whole” than Mrs. Betts’  
11 statements. *Id.* at 25. As a result, the ALJ provided germane reasons to discount Mrs.  
12 Betts’ lay testimony. In total, the ALJ’s findings were supported by substantial  
13 evidence.

14 Accordingly, **IT IS HEREBY ORDERED:**

15 1. Plaintiff’s Motion for Summary Judgment, ECF No. 14, is **DENIED**.

16 2. Defendant’s Motion for Summary Judgment, ECF No. 15, is  
17 **GRANTED**.

18 3. Judgment shall be entered in favor of Defendant and the file shall be  
19 **CLOSED**.

20 **IT IS SO ORDERED.** The District Court Executive is hereby directed to file  
21 this Order, provide copies to counsel and close the file.

22 **DATED** this 19th day of July 2021.



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28

A handwritten signature in blue ink that reads "Stanley A. Bastian". The signature is fluid and cursive, with a horizontal line underneath it.

Stanley A. Bastian  
Chief United States District Judge